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No. 76-600

In the Supreme Court of the United States

OCTOBER TERM, 1976

GEORGE ROMAN DRESKE,

Petitioner,

vs.

JAMES D. HOLT,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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In the Supreme Court of the United States

OCTOBER TERM, 1976

NO.

GEORGE ROMAN DRESKE,

Petitioner,

vs.

JAMES D. HOLT,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The petitioner George Roman Dreske respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on August 2, 1976.

OPINIONS BELOW

The opinion of the court of appeals on petition for rehearing, dated August 2, 1976, is reported at 536 F. 2d 105. The earlier unpublished order of the court of appeals dismissing the appeal is reported at 530 F.2d 973. The opinion and order of the District Court for the Southern District of Florida, dated September 11, 1975, is unre-

ported. The opinions and orders of the court of appeals and the district court are reproduced in the Appendix. (App. 1-12)

JURISDICTION

The order of the court of appeals dismissing the appeal was entered on April 13, 1976. A timely petition for rehearing was granted. Judgment on rehearing was entered on August 2, 1976, and this petition for certiorari was filed within 90 days of that date. This court's jurisdiction is invoked under 28 U.S.C. s. 1254(1).

QUESTION PRESENTED

Whether the Fifth and Fourteenth Amendments to the Constitution of the United States protect non-violent conduct solely intended to resist the unlawful and unreasonable demands of a police officer?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONSTITUTION OF THE UNITED STATES

AMENDMENT V

No person shall be held to answer for a capitol, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger, nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

FLORIDA STATUTE

Section 843.02, Florida Statutes (1971).

> "Whoever shall obstruct or oppose any such officer, beverage enforcement agent, any member of the Florida parole and probation commission or any administrative aide or supervisor employed by said commission or any personnel or representative of the department of law enforcement or legally authorized person in the execution of legal process or in the lawful execution of any legal duty, without offering or doing violence to the person of the officer, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083."

STATEMENT OF THE CASE

Petitioner and his wife were proceeding in an automobile in a *northerly* direction on the Sunshine State Parkway in Martin County, Florida, during the afternoon of February 13, 1973. A young trooper of the Florida Highway Patrol stopped the petitioner's vehicle for purposes of issuing a citation for unlawful speed. In the course of the trooper's issuance of this citation, petitioner identified himself and, in response to a routine request for production of petitioner's driver's license, he informed the trooper that he did in fact have a valid license; however, it had apparently become lost or misplaced.

The trooper informed petitioner that bail would have to be posted in connection with these charges and that a personal check could not be accepted by him. Thereafter, two additional Highway Patrol officers converged on petitioner's vehicle positioning their automobiles in such a fashion as to prevent any possibility of petitioner's vehicle being driven away by him. Petitioner's wife who was now in the driver's position, was ordered to drive said vehicle and accompany the arresting trooper. She advised the officers that she was nervous and she would not follow their instructions to traverse the median strip of the Parkway in order to follow them *southbound* to the Stuart exit. Petitioner had previously agreed to follow the trooper to the next *northbound* exit to surrender himself to the Ft. Pierce Sheriff's Office. At this point in time, both petitioner and his wife were inside their automobile with the doors locked.

All three officers held the same rank. Since they were uncertain as to how to proceed in these circumstances, a radio call was placed to a supervisor, Lt. Sutton, in West Palm Beach. The officers were instructed by Sutton that they were not to break the windows of the Dreske automobile and since petitioner's wife would not comply with the police demands, a tow truck should be called to haul the vehicle and its passengers to the Sheriff's Department at Stuart. A tow truck was in fact called and did arrive on the scene. Nevertheless, the three troopers proceeded for a period of approximately ten minutes to force the removal of the occupants of petitioner's vehicle by issuing further commands and orders, by the display of a crowbar in a menacing fashion, and by the display of a service revolver toward the petitioner and his wife.

Ultimately, all three officers ignored the instruction of their supervisor. A screw driver was secured from the operator of the tow truck, one of the windows in the petitioner's vehicle was forced open and chemical mace was sprayed into the occupied automobile. In the confusion that ensued as petitioner and his wife attempted to exit their vehicle, they were physically shoved about by the officers. Petitioner wound up with his face in the dirt, stomach to ground and hands cuffed behind his back. He and his wife were then transported in a Highway Patrol cruiser to the Martin County Jail at Stuart. Their automobile was towed away.

A criminal information was filed by the State's Attorney of the Nineteenth Judicial Circuit charging petitioner with resisting arrest with violence and a plea of not guilty was tendered to this charge.

Following deliberations, the jury returned a verdict finding petitioner guilty of a lesser offense of resisting arrest without violence. Petitioner was sentenced to a term of confinement of thirty (30) days in the county jail with a further proviso that he pay a fine of $1,000.00 or "in lieu of fine, serve an additional thirty days in jail".

Petitioner filed a petition for Writ of Habeas Corpus attacking the thirty (30) day sentence of imprisonment to commence on January 2, 1976 imposed by the Circuit Court of the Nineteenth Judicial Circuit in and for Martin County on May 4, 1973.

Subsequently, petitioner's conviction was affirmed by the Fourth District Court of Appeals on October 4, 1974. *Dreske* v. *State*, 301 So. 2d 131. (App. 11-12). The Florida Supreme Court denied certiorari on May 8, 1975.

The United States District Court for the Southern District of Florida dismissed petitioner's petition for a Writ of Habeas Corpus in an unpublished order dated September 11, 1975. (App. 1-4). The United States Court of Appeals for the Fifth Circuit originally dismissed petitioner's appeal from the district court's order upon the allegation that petitioner was a fugitive from justice. 530 F.2d 973. Petition for rehearing was granted and the court of appeals vacated its original dismissal. Reaching the merits of petitioner's appeal, the court of appeals affirmed the denial of habeas corpus relief. 536 F.2d 105. (App. 7-10)

REASONS FOR GRANTING THE WRIT

The court of appeals, in a one-sentence, matter-of-law statement, has ruled that there is no merit in petitioner's claim that his resistance to the demands and orders of the police officers was a constitutionally protected activity. 536 F.2d at 127. Petitioner feels that the court of appeals has decided a constitutional question of national importance, which heretofore has not been, but should be, settled by this Court. Moreover, the opinion of the court of appeals is in direct variance with the common law, and probably in conflict with applicable decisions of this Court and the Court of Appeals for the Third Circuit in *United States* v. *Ferrone*, 438 F.2d 381 (3rd Cir. 1971).

The right to resist unlawful and unreasonable demands and orders of the police is deeply rooted in the common law tradition. Indeed, this Court has on two occasions referred to the right to resist an unlawful arrest. *John Bad Elk* v. *United States*, 177 U.S. 529 (1900); *United States* v. *Dike*, 332 U.S. 581 (1948). Moreover, this Court has indicated that due process protects an individual from being punished for violating an arbitrary police order. *Shuttlesworth* v. *City of Birmingham*, 382 U.S. 87 (1965); *Wright* v. *Georgia*, 373 U.S. 284 (1963).

Nevertheless, the right to resist arbitrary and even unlawful police action has undergone marked erosion in recent years. Thus, in *United States ex rel. Horelick* v. *Criminal Court*, the District Court for the Southern District of New York, citing the fact that numerous state appellate court decisions and legislative enactments have abrogated the common law right to resist unlawful arrests, has ruled that barring unusual circumstances, there is no federal constitutional right to resist an unlawful arrest.

366 F.Supp. 1140 (S. D. N. Y. 1973). In *United States ex rel. Kilheffer* v. *Plowfield,* the District Court for the Eastern District of Pennsylvania reached the same result. 409 F.Supp. 677 (E.D. Pa. 1976).

However, it should be noted that in petitioner's case, the lawfulness of the underlying arrest is not in issue, i.e., the arrest for speeding was lawful. The precise question in this case, therefore, is not the right of an individual to resist an unlawful arrest, but rather the right of an individual to refuse to comply with an unreasonable command of a police officer, even though that command is made pursuant to a lawful arrest. In *Horelick,* the court distinguished between resistance to an unlawful arrest and refusal to obey an unlawful police order. The latter is not punishable under *Shuttlesworth* and *Wright.* 366 F.Supp. at 1151. The court of appeals in this proceeding failed to address itself to this precise issue.

Surely the mere fact of an arrest cannot require an individual to submit to any police directive, regardless of how unreasonable. To subject an individual to punishment for such resistance is surely a form of entrapment. The unjustified police conduct constitutes governmental provocation to the arrested person, whose defiance is a natural and predictable consequence. Hence, both the *Horelick* and *Kilheffer* decisions recognize that deliberate lawless official provocation would probably result in a constitutional right to resist. Once again, the court of appeals in this proceeding failed to address itself to the issue of entrapment.

Thus, there seems to be a recognition by the courts that the ordinary resisting arrest case should be treated differently from the case where:

> "the circumstances . . . would be such a provocation to a reasonable man that the seriousness of the offence

> of resistance ought to be mitigated as a result of such provocation."

Kilheffer, 409 F.Supp. at 682, citing *United States* v. *Ferrone,* 438 F.2d 381, 390 n. 19 (3rd Cir. 1971).

Justice Walden of the Florida Appellate Court, in a special concurring opinion affirming petitioner's conviction under the Florida statute, expressed "concern at the poor professional judgment employed by the three State Highway Patrol Troopers, their disregard of their supervisor's instructions, and their use of excessive and unnecessary force in arresting a private citizen for a minor traffic offense when he was unable to post a $26.00 bond." *Dreske* v. *State,* 301 S.2d 131 (Fla.App. 1974) (App. 11-12).

Faced with the unlawful and unreasonable demands of the police officers, petitioner responded with nonviolent conduct, solely intended to resist the provocation. Petitioner's right to resist should be reviewed by this Court.

CONCLUSION

For the reasons set forth above, it is requested that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

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APPENDIX

APPENDIX

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

ORDER OF DISMISSAL

George Roman Dreske has filed a Petition for Writ of Habeas Corpus attacking a thirty (30) day sentence of imprisonment to commence on January 2, 1976 imposed by the Circuit Court of the Nineteenth Judicial Circuit in and for Martin County on May 4, 1973. Such sentence was imposed pursuant to a jury verdict of guilty to a lesser offense of resisting arrest without violence. Petitioner was originally charged with the offense of resisting arrest with violence.

Petitioner subsequently posted bond on Appeal. Petitioner's conviction was affirmed by the Fourth District Court of Appeals on October 4, 1974. See So. 2d 131. The Florida Supreme Court denied certiorari on May 8, 1975. On December 2, 1974 Petitioner moved for reduction of sentence and on June 27, 1975, the trial court ruled that the execution of Petitioner's sentence would be deferred until January 2, 1976. The fine portion of the sentence was to be paid before July 14, 1975. On July 3, 1975, Petitioner moved the trial court be stay execution of sentence until Petitioner had exhausted his Federal remedies. On August 5, 1975 the trial court denied such motion. On September 2, 1975 this Court denied Petitioner's motion seeking bail during the pendency of this Federal Habeas Corpus proceeding.

The Petitioner is in custody for the purpose of Federal Habeas Corpus review. *Hensley* v. *Municipal Court,* 411 U.S. 345 (1973).

As grounds for relief Petitioner alleges that:

1. Florida Statute 843.02 is unconstitutional on its face.
2. Florida Statute 843.02 is unconstitutional in its application due to the alleged insufficiency of evidence presented at trial.
3. The prosecutor's closing argument violated Petitioner's Federal Constitutional rights.
4. The information was amended the day before trial.

Petitioner has exhausted his available state remedies.

Florida Statute 843.02 provides in part that:

> "Whoever shall obstruct any such officer, [Sheriff, etc.] . . ., in the execution of legal process or in the lawful execution of any legal duty, without offering or doing violence to the person of the officer, shall be guilty of a misdemeanor of the first degree."

This Court finds that such statute sufficiently specifies the conduct which is prescribed. Such statute gives "a person of ordinary intelligence fair notice" that his contemplated conduct is prohibited. Accordingly, this Court concludes that Florida Statute 843.02 is not impermissibly vague. See *United States* v. *Harriss,* 347 U.S. 612 (1954); *Grayned* v. *City of Rockford,* 408 U.S. 104 (1972); *Colton* v. *Kentucky,* 407 U.S. 104 (1972).

Additionally, it is clear that such statute does not prohibit constitutionally protected conduct. *Grayned, Supra.*

At present, the evidence clearly established that Petitioner (an out of state motorist) was stopped for speeding on the Florida Turnpike in Martin County. Petitioner failed to obey an order of State Trooper Richard Arthur Weaver to accompany Weaver to the Martin County

Sheriff's Department to post bond. (This is a normal procedure as to out of state motorists). R 238. Petitioner had already been placed under arrest for speeding and failure to produce a valid driver's license. Petitioner locked himself in his vehicle, thereby obstructing the State Troopers in the performance of their lawful duties. The Troopers eventually sprayed "mace" into Petitioner's vehicle to get Petitioner and Petitioner's wife out of the vehicle. Allegedly, Petitioner "Flung" his door open and "swung" at the Troopers. R 251-252

Accordingly, this Court finds that Petitioner's second contention is unmeritous. An examination of the trial transcript reveals that the evidence was clearly sufficient to sustain conviction of the offense charges. It is well established that Federal Habeas Corpus proceedings are not available to review the sufficiency of evidence presented in state trials unless the evidence is so totally lacking that to uphold the verdict would constitute a denial of the constitutional right to due process of law. *Young* v. *Alabama,* 443 F. 2d 854 (5th Cir., 1971); *Pleas* v. *Wainwright,* 441 F. 2d 56 (5th Cir., 1971).

Petitioner's third contention does not rise to constitutional proportions. At no point did Petitioner object to any allegedly prejudicial prosecutorial comment during closing argument. Nonetheless, this Court concludes that the prosecutor's closing argument did not vitiate the basic fairness of the trial. *Bryant* v. *Caldwell,* 484 F. 2d 65 (5th Cir., 1973); *Higgins* v. *Wainwright,* 424 F. 2d 177 (5th Cir., 1970). Prejudicial remarks fall within the category of "trial irregularities" and are not generally reviewable in Federal Habeas Corpus proceedings.

Finally, Petitioner contends that the information was improperly amended on April 10, 1973 (one day prior to trial). However, Petitioner was adequately apprised of the offense for which he was charged and was not prejudiced in the preparation of his defense. At present, the deposition of Trooper R. J. Carroll dated March 16, 1973 clearly reveals that Petitioner was not prejudiced or surprised by any matters contained in the amended information. See *United States* v. *Blanchard,* 495 F. 2d 1329 (1st Cir., 1974); See e.g., *United States* v. *Miller,* 491 F. 2d 638 (5th Cir., 1974); *United States* v. *Fischetti,* 459 F. 2d 31 (5th Cir., 1971).

For these reasons it is hereby

ORDERED AND ADJUDGED that this Petition for Writ of Habeas Corpus be DISMISSED.

DONE AND ORDERED at Miami, Florida, this 11th day of September, 1975.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term, 1975

No. 75-3942

D. C. Docket No. 75-1433-CIV-CA

GEORGE ROMAN DRESKE,
Petitioner-Appellant,

versus

JAMES D. HOLT, Sheriff, Martin County, Florida,
Respondent-Appellee.

Appeal from the United States District Court for the Southern District of Florida

Before AINSWORTH, CLARK and RONEY, Circuit Judges.

JUDGMENT ON REHEARING

This cause came on to be heard on petitioner-appellant's petition for rehearing;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the opinion originally entered in this Court on April 13, 1976 is vacated; and that the judgment of the said District Court appealed from is hereby affirmed.

George Roman DRESKE,
Petitioner-Appellant,

v.

James D. HOLT, Sheriff, Martin County, Florida,
Respondent-Appellee.

No. 75-3942

United States Court of Appeals,
Fifth Circuit.

Aug. 2, 1976.

An appeal from a denial of habeas corpus relief in the United States District Court for the Southern District of Florida at Miami, C. Clyde Atkins, J., was originally dismissed, 530 F.2d 973. On petition for rehearing, the Court of Appeals held that the Florida statute under which defendant was convicted of resisting arrest without violence provided a person of ordinary intelligence with fair notice of prohibited conduct, and was not facially unconstitutional. Resistance to arrest was not constitutionally protected. Evidence was ample to establish petitioner's resistance to arrest and refusal to accompany officers in performance of their legal duties, and thus established violation of the statute. There is no sufficiency of evidence problem rising to constitutional proportions for habeas corpus relief.

Affirmed.

1. *Obstructing Justice*—2

Florida statute under which defendant was convicted of resisting arrest without violence provided person of ordinary intelligence with fair notice of prohibited conduct and was not facially unconstitutional; resistance to arrest

was not constitutionally protected activity. West's F.S.A. § 843.02.

2. *Obstructing Justice*—16

Evidence was ample to establish petitioner's resistance to arrest and refusal to accompany officers in performance of their legal duties, and thus established violation of Florida statute. West's F.S.A. § 843.02.

3. *Habeas Corpus*—45.2(4)

There is no sufficiency of evidence problem rising to constitutional proportions for habeas corpus relief.

4. *Criminal Law*—1037.1(1)

No constitutional error was found in closing remarks of prosecutor, to which defendant had made no objection.

5. *Indictment and Information*—161(6)

Petitioner was not prejudiced or surprised by any matters contained in amended information, which added name of second officer involved with arrest, to which petitioner had made resistance, and in absence of any attempt by petitioner to obtain continuance, amendment one day prior to trial did not deny him fair trial. West's F.S.A. § 843.02.

Appeal from the United States District Court for the Southern District of Florida.

ON PETITION FOR REHEARING

Before AINSWORTH, CLARK and RONEY, Circuit Judges.

PER CURIAM:

In an unpublished order we originally dismissed this appeal from a denial of habeas corpus relief upon the allegation that petitioner was a fugitive from justice. *Dreske*

v. *Holt,* 530 F.2d 973 (5th Cir. 1976). It now appears that petitioner was not a fugitive, at least in the traditional sense. The petition for rehearing therefore is granted and the original order of dismissal is vacated. Reaching the merits of petitioner's appeal, we affirm the denial of habeas corpus relief.

Part of the confusion raised by this case, in regard to Dreske being a fugitive from justice, is petitioner's failure to comply with the district court's order for posting a bail bond in the sum of $5,000. The bond was set as a condition of the stay pending appeal of the district court's denial of relief, so that Dreske could remain free while the appeal was pending before this Court. Nothing in the record indicates the reason for noncompliance with the district court's bond requirements. Nevertheless, petitioner is currently free on a $5,000 state court supersedeas bond. Because of health reasons, Dreske's sentence had been deferred by the state court until July 1, 1976. Instead of remanding this case to the district court for determining why the order was not complied with, judicial economy, and the best interests of all parties, will be better served by this Court's disposition of the appeal on the merits.

Dreske, an out-of-state motorist, was stopped on the Florida Turnpike for speeding and driving without a valid license. He refused to accompany officers to the sheriff's department to post bond, a normal procedure for out-of-state motorists, and subsequently locked himself inside his car. A jury convicted Dreske of resisting arrest without violence. Fla.Stat. § 843.02. He was sentenced to 30 days in jail and fined $1,000. This conviction was affirmed on appeal. *Dreske* v. *State,* 301 So.2d 131 (4th D.C.A.Fla. 1974), *cert. denied,* 314 So.2d 582 (Fla. 1975).

Dreske levels several constitutional challenges to Florida Statute § 843.02 which he was convicted of violating. The statute provides:

> Whoever shall obstruct or oppose any such officer, beverage enforcement agent, any member of the Florida parole and probation commission or any administrative aide or supervisor employed by said commission or any personnel or representative of the department of law enforcement or legal authorized person, in the execution of legal process or in the lawful execution of any legal duty, without offering or doing violence to the person of the officer, shall be guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

Dreske also argues denial of due process by the prosecutor's prejudicial closing arguments at the state trial, and by the state's amending the information one day prior to trial.

[1-3] We agree with the district court that Fla.Stat. § 843.02 is not facially unconstitutional. Under the principles enunciated by the Supreme Court, the statute provides a person of ordinary intelligence with fair notice of the prohibited conduct. *See, e. g., Grayned* v. *City of Rockford,* 408 U.S. 104, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972); *Colten* v. *Kentucky,* 407 U.S. 104, 92 S.Ct. 1953, 32 L.Ed.2d 584 (1972); *United States* v. *Harriss,* 347 U.S. 612, 74 S.Ct. 808, 98 L.Ed. 989 (1954). There is no merit in petitioner's claim that his resisting arrest was constitutionally protected activity. *See Colten* v. *Kentucky, supra.* Neither is there any substance to the argument that the statute is unconstitutional as applied to the facts of petitioner's case. The record contains ample evidence of petitioner's resisting arrest and his refusal to accompany the officers in the performance of their legal duties. There is

no sufficiency of the evidence problem rising to constitutional proportions for habeas corpus relief. *Young* v. *Alabama,* 443 F.2d 854, 855 (5th Cir. 1971), *cert. denied,* 405 U.S. 976, 92 S.Ct. 1202, 31 L.Ed.2d 251 (1972); *Pleas* v. *Wainwright,* 441 F.2d 56, 57 (5th Cir. 1971).

[4] Petitioner argues constitutional error in the prosecutor's closing remarks. No objection was made to these comments. We find no error of constitutional proportions. *See Higgins* v. *Wainwright,* 424 F.2d 177, 178 (5th Cir.), *cert. denied,* 400 U.S. 905, 91 S.Ct. 145, 27 L.Ed.2d 142 (1970).

[5] Petitioner's final argument is that amending the information one day prior to trial denied him a fair trial. The amendment added the name of a second officer involved with the arrest. Dreske made no attempt for a continuance. We affirm the district court's finding that petitioner was not prejudiced or surprised by any matters contained in the amended information. *See United States* v. *Blanchard,* 495 F.2d 1329, 1332-1333 (1st Cir. 1974); *cf. United States* v. *Miller,* 491 F.2d 638, 644 (5th Cir.), *cert. denied,* 419 U.S. 970, 95 S.Ct. 236, 42 L.Ed.2d 186 (1974).

AFFIRMED.

George Roman DRESKE, Appellant,

v.

STATE of Florida, Appellee.

No. 73-557.

District Court of Appeal of Florida,
Fourth District.

Oct. 4, 1974.

Rehearing Denied Oct. 30, 1974.

Appeal from Circuit Court, Martin County; C. Pfeiffer Trowbridge, Judge.

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Robert L. Shevin, Atty. Gen., Tallahassee, and C. Marie Bernard, Asst. Atty. Gen., West Palm Beach, for appellee.

PER CURIAM.

Affirmed.

OWEN, C. J., and DOWNEY, J., concur.

WALDEN, J., concurs specially.

WALDEN, Judge (specially concurring):

Having considered the several points, I concur that, according to the theme and limits of our appellate authority, the judgment and sentence must be affirmed. However, I don't feel the issues should be allowed to slip into oblivion without taking note and generally expressing concern at the

poor professional judgment employed by the three State Highway Patrol troopers, their disregard of their supervisor's instructions, and their use of excessive and unnecessary force in arresting a private citizen for a minor traffic offense when he was unable to post a $26.00 bond. While appellant did refuse to cooperate and as a consequence received the maximum allowable sentence, which we here affirm, he was fifty-five years of age, unarmed, passive and offering no threat to the safety of the troopers. Regardless, there were threats with a crowbar, a loaded service revolver, use of mace, and manhandling, all of which could have been avoided had the troopers simply followed the explicit instructions of their supervisor, Lieutenant Sutton.

For these reasons I do expressly concur.